

UGANDA / JUDGMENT

Kaddu Richard v Mawejje Edward and Gayiira Ausi (HCT-17-LD-MA-0266-2023) [2025] UGHC 308 (6 March 2025)

[2025] UGHC 308

COURT
High Court of Uganda

BEFORE
Wolayo, J

CASE / FILE NUMBER
HCT-17-LD-MA-0266-2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT LUWERO HCT-17-LD-MA-0266-2023 ARISING FROM CIVIL APPEAL NO. HCT-LD--0003 -2022 ARISING FROM LUWERO CHIEF MAGISTRATE'S COURT CIVIL SUIT NO. LUW-00-LD-CS-0121-2020

KADDU RICHARD..... APPLICANT

V

- 1. MAWEJJE EDWARD
- 2. GAYIIRA AUSI..... RESPONDENTS

BEFORE LADY JUSTICE HENRIETTA WOLAYO RULING

Introduction

1. By a notice of motion filed on 5.11.2023, the applicant moved this court for an order to strike out the notice and memorandum of appeal filed by the respondent Civil Appeal No. 0003 of 2022. The application is supported by the affidavit in support of the applicant Kaddu. The respondent did not file an affidavit in reply.

Background facts

2. On 28.2.2024, counsel Edward Sebume for the applicant and James Bagonza for the respondents appeared before me and after an interaction with both, it was clear that counsel for the respondent had not secured the certified record of proceedings of the lower court at which point, I directed him to secure the record otherwise it appeared as if the respondent wished to freeze the trial in the lower court.
3. Subsequently the lower court record was availed and on 11.7. 2024, I issued directions for the applicant to file written submissions by 11.8.2024; the respondent by 11.9.2024 and rejoinder by 18.9.2024. As I write this Ruling, only counsel for the applicant has filed submissions which I have carefully considered.

Luwero Chief Magistrate's court Civil Suit No. 121 of 2022 Kaddu Ricahrd V Mawejje Edward and Gayiira Ausi

- 4. The application to strike out a memorandum of appeal stems from the court sitting of 28.6.2022 when counsel for the respondent raised a preliminary objection that the chief magistrate did not have pecuniary jurisdiction to try the case. Counsel based his submission on a valuation o report that put the value of the subject matter at 60,000,000/.
- 5. Some background facts about the suit. The applicant Kaddu is the registered proprietor of Bulemezi Block 605 plot 10 land at Ngaju measuring approximately 4.95 acres. Kaddu and his sibling Mawejje are sons of late Adam George Wilson Sempa.
- 6. In his plaint, Kaddu claims that Mawejje who was the administrator together with other siblings Kiemerwa and Sengoba sold their share in the estate of their late father Adam George Wilson Sempa to Kaddu. Subsequently, Mawejje signed for him transfer forms for Bulemezi Block 605 Plot 10 and the transfer of title was effected.
- 7. In a turn of events, Ausi the second defendant came claiming that Mawejje had sold him one acre. It was for this reason that Kaddu sued Mawejje and Gayiira Ausi for trespass; a declaration that he is the lawful proprietor; and a permanent injunction among other relief.
- 8. In their written statement of defense , Mawejje claimed he sold Kaddu only one acre and not the entire two hectares and that he sold to Ausi one acre. The long and short of the dispute is that while Kaddu claims he bought the entire plot measuring two hectares, Mawejje claims he sold only one acre to his brother Kaddu.

Resolution of the case

- 9. The point of departure between the two parties in the lower court was that the subject matter was the whole two hectares whereas not. This means that the preliminary objection raised by counsel for Mawejje was without merit as one acre is definitely within the jurisdiction of a grade one magistrate and certainly the chief magistrate.

- 10. But, even if it were taken that the four plus acres are in dispute, **Section 207(4) of the Magistrates Courts Act Cap. 19** stipulates that in a suit where it is impossible to ascertain the value of a subject matter where the plaintiff seeks declaratory orders, a chief magistrate or a grade one have jurisdiction to hear the dispute provided any award of damages shall not exceed pecuniary jurisdiction. Furthermore, a second safeguard is that if the lower court finds that there is need to cancel a title or make changes to it, the case is referred to the High Court for consequential orders. To say otherwise would be to pile backlog on the High court when it is already swamped with land disputes.
- 11. I am alive to the fact that counsel for the applicant in his submissions limited himself to the striking out of the appeal for having been filed without leave from the trial court. Of course there is merit in the submissions because under **Order 44 rule 2** of the Civil Procedure Rules where a right of appeal is not provided for in the rules, the appeal shall lie with leave of the court that passed the order. As no automatic right of appeal obtains against Rulings on preliminary

objections, Kaddu had a responsibility to seek leave initially in the trial court and if it was denied, in the High Court.

- 12. Given that the trial in the lower court has been on hold since 2022 over a nonissue, I have taken the liberty to exercise my supervisory powers conferred by Section 17(2) (a) and 37 of the Judicature Act Cap.16 to determine the appeal so as to curtail delays in the trial of **Luwero Chief Magistrates Court Civil Suit No.0121-2020**. Consequently, although the current application is about striking out the appeal on a procedural point of law, I have gone into the merits of the appeal and found that the learned chief magistrate acted within the law when he ruled that he had jurisdiction to hear the dispute.
- 13. In the premises, having found that a chief magistrate or magistrate grade one have jurisdiction to entertain the dispute whose subject matter is one acre and where the plaintiff seeks a declaratory order that he is the lawful owner of the one acre, the lower court record will be returned to the chief magistrate for further management and for expeditious hearing of the case. Costs in the cause.

DATED AT LUWERO THIS 6TH DAY OF MARCH 2025.

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